IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NOS.1804 OF 2006 AND 236 OF 2007
AND
M.P.NOS.1 AND 2 OF 2006 AND 1 AND 1 OF 2007

Senthilvel
Secretary,
AVC Education Committee,
AVC College,
Manampandal,
Mayiladuthurai .. Petitioner in
CRP.NPD.1804 of 2006

Rethinakumar .. Petitioner in
CRP.NPD.236 of 2007

Vs.

Rethinakumar .. Respondent in
CRP.NPD.1804 of 2006

Senthilvel .. Respondent in
CRP.NPD.236 of 2007

These civil revision petitions have been preferred under Article 227 of the Constitution of India against the orders of the learned Scheme Judge (Principal Subordinate Judge, Mayiladuthurai), dated 1.11.2006 passed in E.A.No.16 of 2006 in O.S.No.68 of 1948 as amended in O.S.No.234 of 1994.

For Petitioner : Mr.Rajah in CRP.NPD.No.1804 of 2006
Mr.M.Balasubramanian
in CRP.NPD.No.236 of 2007
For Respondent : Mr.M.Balasubramanian
in CRP.NPD.No.1804 of 2006
Mr.Rajah in CRP.NPD.No.236 of 2007

COMMON ORDER

This order shall govern the above two civil revision petitions.

2.These two civil revision petitions are directed against the order made by the learned Principal Subordinate Judge, Mayiladuthurai, the Scheme Court made in E.A.No.16 of 2006 in O.S.No.68 of 1948 as amended in O.S.No.234 of 1994. One at the instance of the respondent therein and the later at the instance of the petitioner therein.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3.The said application in E.A.No.16 of 2006 was filed by the petitioner in C.R.P.No.236 of 2007. The short facts necessary for the disposal of these civil revision petitions can be stated thus:

a)Anbanathapuram Vagaiyara Charities is a public charitable trust at Mayiladuthurai and is administering several educational institutions. A scheme decree came to be passed by the Subordinate Judge, Mayiladuthurai in O.S.No.68 of 1948 as amended in O.S.No.234 of 1994. The actual administration of the educational institutions, three in number, was conducted by the Educational committee under the scheme framed by the said court. The rules of the management of the said educational committee was also framed and thus, the said rules, which are approved by the said court in O.S.No.68 of 1948 as amended in O.S.No.234 of 1994, are in force.

b)The two committees, one educational committee and the other college committee, are independent and having its members and were functioning. The petitioner in CRP No.236 of 2007 was convicted and sentenced to undergo 6 months imprisonment and also to pay a fine of Rs.1000/- on each count under Sections 408 and 477 IPC by the learned Judicial Magistrate No.1, Mayiladuthurai on 25.9.2006. An appeal was preferred by the petitioner, which is pending on the file of the learned District Judge, Nagapattinam. Pending appeal, the application was filed for suspension of the execution of sentence and it has been ordered.

c)While the matter stood thus, the petitioner in CRP No.1804 of 2006 sent a note through circulation to the educational committee members on 14.10.2006, stating that the conviction and sentence imposed on the petitioner in CRP No.236 of 2007 would disqualify him from being a member of both the educational committee and college committee, since the offence involved moral turpitude as set out under Section 8(6)(c) of the Tamil Nadu Private Colleges (Regulation) Act and has requested the members to express their views why the respondent should not be suspended till the disposal of the show cause notice. The show cause notice was issued to the petitioner in CRP No.236 of 2007 on 16.10.2006, calling for explanation from him. The show cause notice was served on him on 17.10.2006 and the petitioner in CRP No.236 of 2007 gave a reply on 23.10.2006. Following the same, he was suspended in view of the alleged disqualification. On the service of the said suspension order, the petitioner in CRP No.236 of 2007 filed E.A.No.16 of 2006 before the Scheme court. The scheme court took it on file, served notice on the respondent and gave an opportunity of being heard to both sides. After hearing both sides, it has finally passed an order that the suspension of the petitioner therein in respect of his membership in the educational committee was bad and he could continue as the member of the educational committee and so far as the suspension in the college committee was concerned, it was correct and therefore, he could not continue.

d)After passing the order, the petitioner in the said E.A.No.16 of 2006, aggrieved over that part of the order against him, has brought forth C.R.P.No.236 of 2007, while the respondent therein has brought forth C.R.P.No.1804 of 2006, challenging that part of the order, which was in favour of the petitioner. Hence, these two civil revision petitions have arisen before this court.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4.The court heard the learned counsel on either side. Concedingly, there are two independent committees, one is the educational committee and the other is the college committee. In both the committees, the petitioner in CRP No.236 of 2007, one Rethinakumar, was the member during the relevant time. From the submissions made and from the materials available, it would be quite evident that on the accusations made in the court of criminal law, he was found guilty under Sections 408 and 477 IPC by the learned Judicial Magistrate No.1, Mayiladuthurai by judgment dated 25.09.2006 and the said judgment is the subject matter of appeal before the District Court, Nagapattinam. The execution of suspension imposed on him is also kept under suspension. While the matter stood thus, educational committee has issued show cause notice to him that there was disqualification by the said conviction and sentence and hence, why he should not be removed. He also gave a reply. Pending the same, he was suspended from the membership of both the educational committee and college committee. Challenging the same, he filed the said execution application. After hearing both sides, the learned Subordinate Judge, Mayiladuthurai, the Scheme Court, has passed the impugned order.

5.After hearing the learned counsel on both sides and after looking into the order, the court is of the considered opinion that in the instant case what has been initiated is only the show cause notice has been served on him and he has given an explanation also and hence, an enquiry has got to be conducted. In the meanwhile, he has been suspended. Needless to say, suspension is neither a penalty nor punishment. It is further to be pointed out that merely because there is suspension, no question of challenging the same before the court would arise at that stage on that ground. A regular enquiry has to be conducted and till that time, the parties could wait. But, instead of issuing such a direction, the lower court has passed an elaborate order, discussing both factual and legal positions. The court is of the considered opinion that it was not at all warranted. Apart from that, the contention put forth by the counsel that show cause notice could not be issued cannot be countenanced in law. As could be seen, the educational committee has got power to proceed with the enquiry and to initiate proceedings and it has got powers to issue show cause notice, which has been done. Hence, the same cannot be questioned. At this juncture, even the suspension order, since it is not a penalty or punishment, need not be disturbed.

WEB COPY

6.At this juncture, it is brought to the notice of the court that the inter se members of the educational committee are also litigating before the court in respect of their positions and under these circumstances, it would be very difficult for the present committee to proceed with the enquiry. Hence, both the counsel would submit that an independent agency could be constituted for conducting enquiry. Under these circumstances, it would be fit and proper to issue a direction to the enquiry agency to conduct enquiry over the matter and complete the same within a period of three months from this day. The parties are also present in court and they are directed to co-operate with that agency to complete the enquiry within a period of three months. This court is of the considered opinion that a retired Judge of this court could be appointed for conducting enquiry. Accordingly, Hon'ble Mr.Justice K.P.Sivasubramaniam is appointed for the said purpose and the remuneration is fixed at Rs.75,000/-, which shall

https://hcservices.ecourts.gov.in/hcservices/

be paid by the Trust. The other expenses to be incurred by the Hon'ble Judge in connection with the enquiry shall be borne by the Trust.

7.The order passed by the learned Subordinate Judge in the E.A. is set aside and the original status quo at the time of show cause notice and the suspension is to be maintained till the completion of the enquiry.. Both the civil revision petitions are disposed of accordingly. No costs. Consequently, connected MPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

The Principal Subordinate Judge,
Mayiladuthurai.

2. The Honourable Mr.Justice K.P.Sivasubramaniam,
Judge (Retd.,) High Court, Madras,
47, Bulla Avenue,
Shenoy Nagar, Chennai - 80.

2 cc To Mr.M.Balasubramanian, Advocate, SR.43681.
1 cc To Mr.Rajah, Advocate, SR.43632.

C.R.P.NPD.NOS.1804 OF 2006
AND 236 OF 2007

SSV(CO)
RVL 30.07.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/